

# Review of Facts Regarding Employee Settlements

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On March 16, 2014, Governor Branstad instructed his Chief of Staff, General Counsel and Director of the Department of Management to conduct a comprehensive review of Executive Branch personnel settlement agreements. This report contains the findings of the comprehensive review.

## Review of Settlement Agreements

We were asked to review the facts concerning:

- the number of personnel settlement agreements
- the process for settlement agreements relating to personnel matters, including oversight and controls
- whether any personnel settlement agreements contained confidentiality provisions
- allegations made by former state employees that their termination, and subsequent settlement agreements, were due to their party affiliation as reported by the *Des Moines Register*, Sunday, March 16, 2014

We were also requested to provide recommendations to improve the process and transparency.

All personnel settlement agreements since January 14, 2011, provided by the Department of Administrative Services (DAS) were reviewed.

We sought advice from the Attorney General's office.

We met with the Department of Administrative Services, including Director Mike Carroll, Paul Carlson and spoke to former Department of Administrative Services General Counsel Ryan Lamb. We also spoke with the Department of Public Health Interim Director Gerd Clabaugh and other executive branch agency directors that entered into settlement agreements that included confidentiality provisions.

## Number of personnel settlement agreements

Since January 14, 2011, there have been 321 settlements relating to personnel matters. Our review found that 24 of these settlements contained some provision relating to confidentiality. These provisions did not contain identical wording. A chart is attached detailing the number of complaints, settlements and confidentiality provisions by fiscal year. A summary list is attached detailing whether the 24 agreements with confidentiality provisions contained lump sums. Of the 24 agreements, 10 contained lump sum payments.

Based on advice from the Attorney General's office, specifically Solicitor General Jeff Thompson, a state personnel settlement agreement itself cannot be confidential under Chapter 22. Any confidentiality clause that keeps the agreement confidential would be unenforceable. According to the Attorney General's Office, settlement agreements with confidentiality clauses must be released. If a settlement agreement contains confidential information, only that confidential information must be redacted, not the entire agreement.

## **Process for settlement agreements relating to personnel matters**

### **Grievance Settlement Process for Non-Contract Employees:**

**Step 1:** An employee must initiate the grievance by submitting it in writing to the immediate supervisor. The supervisor gives a decision in writing to the grievant within seven days.

**Step 2:** A grievant who is not satisfied with the first step response may file the written grievance with the designated management representative at Step 2 in the agency's grievance process within seven days after receipt of the Step 1 decision. The designated management representative must give a decision in writing to the grievant within seven days after the grievance was received at Step 2.

**Step 3:** A grievant who is not satisfied with the Step 2 decision, may file the written grievance with the Chief Operating Officer of Department of Administrative Services – Human Resources Enterprise (DAS-HRE) within fourteen days after the Step 2 decision is received for appeals of disciplinary actions involving suspension, reduction in pay, demotion, or discharge, an employee must file an appeal within seven days as outlined above. The Chief Operating Officer of DAS-HRE (or designee) gives the grievant a written decision within thirty days. If the grievant is dissatisfied with the response, and the grievance alleges a violation of Iowa Code Chapter 8A, subchapter IV; chapter 70A; or the DAS-HRE administrative rules in chapter 11, the grievant may file an appeal with the Public Employment Relations Board within thirty days following the date the Chief Operating Officer's response was received.

### **Grievance Settlement Process for Contract Employees:**

The grievance settlement process for contract employees can be found in the collective bargaining agreement. See Article IV [http://das.hre.iowa.gov/documents/union\\_contracts/afscme\\_contract\\_13-15.pdf](http://das.hre.iowa.gov/documents/union_contracts/afscme_contract_13-15.pdf). The process is similar to the process described above, but includes a Grievance Review Improvement Process (GRIP).

## Oversight and controls in place for authorizing settlement agreements

**Approval of Settlements:** According to DAS, the standard practice, starting in January of 2012, was for the DAS General Counsel or DAS Director to sign off on all settlements. This approval was apparently either oral or written.

## Allegations made by former state employees that their termination and subsequent settlement agreements were due to their party affiliation

Upon review of department reorganization plans and conversations with executive branch department directors, allegations that former state employees were terminated because of their party affiliation are false. The reasons for the employee layoffs were either a result of department reorganization or other personnel matters, including performance. In the six specific cases reported by the *Des Moines Register*, Sunday March 16, 2014, two were No Party, two were Republican and two were Democrat.

## Recommendations:

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- Confidentiality provisions in personnel settlement agreements are contrary to the Open Records law and the goal of transparency. Such provisions should not be included in any personnel settlement agreement. It is troubling that 24 agreements included confidentiality language.
- Each personnel settlement agreement should clearly state that the agreement is subject to Open Records and is available for public inspection and copying.
- Inadequate oversight exists for approval of personnel settlement agreements. Approval by the Director of DAS should be in writing. In addition, review should be sought from the Attorney General on each settlement. The director of the Department of Management should approve any settlement. The head of the employing agency should also approve any settlement.
- Personnel settlement agreements should be readily accessible to the public.
- Many times, in an employee termination, information that is in the public interest is located in a personnel file. This information is not allowed to be disclosed according to the Open Records Act (section 22.7(11)). The law should be changed to allow for some common-sense exceptions to this confidentiality.

## **Settlement Agreements with Confidentiality Clauses** (no lump sum\* payment)

1. Buenger, Wendy (Civil Rights) no cash settlement
2. Drayton, Tiffanie (Civil Rights) no cash settlement
3. Howard, Michele (Civil Rights) no cash settlement
4. Judish, John (DIA) no cash settlement
5. Flaherty, Annette (Civil Rights) no cash settlement
6. Davis, Christopher (IWD) no cash settlement
7. Davidson, Judy (DHS) no cash settlement
8. McAllister, Terry (DHS) no cash settlement
9. Harmeyer, Patricia (DOT) no cash settlement
10. Tuttle, Ethan (DOT) no cash settlement
11. Aranda, Diana (DHS) no cash settlement
12. Opal, Larry (DOC) no cash settlement
13. Swizdor, Richard (ABD) no cash settlement
14. Schaeffer, Tim (DHS) no cash settlement

\*Does not include pay, back pay, vacation, sick leave or benefits.

## **Settlement Agreements with Confidentiality Clauses** (with lump sum payment)

1. Edmond, Deanna (DHS): \$4,000
2. Deichmann, Pam (IDPH) \$20,000
3. Schmitz, Tony (DAS) \$35,725
4. Forshee, Gary (DAS) \$54,089
5. Grabau, Kelli (IVH) \$110,000
6. Frank, Carol (DAS) \$77,326.25
7. Martin, Edward (DHS) \$10,000
8. Frye, Sue (DHS) \$7,900
9. Yan, Swallow (DNR) \$100,000
10. Schroeder, Deborah (DOE) \$8,000

**Department of Administrative Services Personnel -  
Grievance/Settlement Data, since Jan. 14, 2011:**

Fiscal Year:	Number of Grievances Filed at Step 2:		Number of Months:		Average Number Filed/Mo.:		Number of Settlements:		Number with Conf. Clause:	Number without Conf. Clause:	
2011 (5.5 mos.)	325		5.5		59		110		8	102	
2012	910		12.0		76		107		3	104	
2013	615		12.0		51		68		13	55	
2014 YTD (8.5 mos.)	422		8.5		50		36		0	36	
Totals:	2272		38.0		60		321		24	297	

**NOTE:** Data does not include community based corrections grievances prior to the Grievance Resolution Improvement Process (GRIP, Step 3), grievances settled prior to Step 2, and grievances from the Board of Regents, Judicial Branch, and Legislative Branch.

**NOTE:** Some settlement agreements settle multiple grievances.

**NOTE:** Data includes GRIP "settlements." We are awaiting legal advice from the Attorney General's office as to whether these GRIP decisions are allowed to be released pursuant to the Open Records Act.

**NOTE:** Based on DAS data.